

REMARKS

Reconsideration of this application is respectfully requested.

These remarks are a recapitulation of applicant's remarks during a September 26, 2007 telephone interview with the Examiner. No commitments were made by the Examiner during the interview.

Claims 3, 5-28, 31-32 and 33-36 were rejected under 35 USC § 103(a) based on U.S. Patent 5,902,984 to Planke combined with U.S. Patent 5,431,250 to Schlamp. The Examiner's reliance on Schlamp rather than U.S. Patent 6,439,345 to Recktenwald et al. was clarified by the Examiner in a recent telephone discussion.

However some comments regarding Recktenwald et al are believed warranted in view of the Examiner's comment at item 13, page 6 of the Office Action that Recktenwald et al is very pertinent to applicant's invention.

Applicant's system encompasses an article token selection device whereby an article is selected by a customer, the selected article is automatically symbolized by the article token selection device and the symbolized article is dispensed to the customer for use in purchasing and obtaining the selected article.

Recktenwald et al relates to a system that becomes effective after a purchase is completed and the article purchased is not available at the point of sale. Thus Recktenwald et al is for an item pick-up system whereas applicant's invention is for a system for sale of consumer goods. Recktenwald et al provides means for identifying a person who is to receive the purchased item and for identifying the purchased item. Recktenwald et al discloses a kiosk that enables a customer to identify himself and identify the item that is being sought for pick-up after it has been paid for. It is thus submitted that Recktenwald et al whether considered individually or in combination with Planke and Schlamp, as hereinafter discussed, does not show or suggest applicant's invention as claimed herein.

The Examiner states at page 5, item 8 of the Office Action that,

“Planke did not explicitly describe a method/system in which the initial non-validated card/token/ticket is dispensed by a mechanism such as dispensing unit.”

The Examiner relies on Schlamp as relating to a system for the sale and delivery of products and having a mechanism that enables a user to select products to be purchased. The Examiner further states in regard to Schlamp, at page 5, item 8 of the Office Action that,

“the mechanism can print a bar coded receipt, used by the cash register to validate the receipt and give the user a validated token/card for the user to use to actually get the item...According to Schlamp, the selection item contains a keyboard...which suggests that it would also be used as an entry device.”

It should be noted that Schlamp has a priority date of May 22, 1992 and Planke has a priority date of October 12, 1994. Applicant submits that if Planke had knowledge of Schlamp, Planke as a person skilled in the art would not adopt Schlamp for reasons discussed herein.

Schlamp requires a user/customer/purchaser to obtain an electronic scanning device upon entering a sales facility. However, the customer cannot obtain the purchased product at the sales facility because the sales facility is a “sample shop” (column 1, line 47) having pictures or samples of articles for display only. The purchaser goes from shelf to shelf in the Schlamp sample shop to select one or more desired articles, scans the bar code of the desired articles with the scanning device and types the quantity of desired articles onto the keyboard of the scanning device (column 1, lines 50-55).

After the purchaser has used the Schlamp scanning device to scan the bar codes of all articles of interest, the purchaser goes to the cash register to pay for the desired articles. The purchase amount is based on data that becomes stored in

the scanning device during the scanning operation. When payment for the purchases is being made, the scanning device is returned to the cashier and presumably the cashier or some other party records the fact that the scanning device was returned.

After payment is completed the purchaser in Schlamp obtains a collection card from the cashier. In order to obtain the purchased articles the purchaser must bring the collection card to a product distribution station that can be miles away from the sample shop (column 1, lines 59-65).

Schlamp further points out at column 3, lines 4-60 that the collection card is in the form of a data carrier such as a bar code card or a magnetic card which is received by the purchaser after paying by cash or check at a cash register.

Schlamp's invention is intended to mitigate the problem of high rental costs for sales space in desirable commercial retail locations which have public transportation and insufficient parking facilities. Rather than have a huge sales and warehouse facility at a high rent location Schlamp proposes a relatively small sales facility that is just used to display samples of the articles that are being sold.

Schlamp then proposes that the purchaser, after paying for the goods, go home, get in their car and travel to a product pick-up location, miles away from the sales location to pick up the purchased product. The product pickup location is at a relatively low rent area that enables the seller to warehouse articles at less expense than at the sales facility where the article is offered for sale.

The Examiner states at page 5, item 9 of the Office Action that it would have been obvious for skilled artisans to combine Planke's merchandise dispenser with Schlamp's invention that relates to a system for the sale and delivery of products. It should be noted that all of applicant's claims require an article selection device activatable by a customer.

Planke shows a self service shelf 1 in Fig. 1 with merchandise symbols A, B, C, D, E, and F. Each merchandise symbol represents a specific article. The symbols

A-F of the respective articles may be optically, magnetically or electronically readable cards containing data in the form of one or more numbers (column 3, lines 26-31).

The Examiner's combination of Schlamp with Planke infers that Planke's pre-printed, electronically readable cards A-F are replaceable by Schlamp's scanning device and that the replacement of the product cards with the scanning device would be obvious to persons skilled in the art.

Applicant submits that there is no advantage, benefit or incentive to persons skilled in the art to replace Planke's pre-printed electronically readable article cards or symbols A-F with Schlamp's scanning device.

Planke's pre-printed article symbols A-F are already available when a customer comes into a store to purchase merchandise. Planke's article symbols already represent specific articles of merchandise. Thus it is a relatively simple matter for a customer in the Planke system to obtain an article symbol that corresponds to a desired product and exchange that card for the actual product.

Applicant submits that the Examiner's suggested replacement of the relatively simple and effective article symbols or cards in Planke with the relatively complex scanner of Schlamp is a step backwards and an inconvenience to customers because Schlamp would require customers to first obtain a scanner (which would require presentation of identification) and then perform a scanning operation. None of this is necessary with Planke's merchandise symbols A-F.

Furthermore, Planke's merchandise symbols are simple, cheap and expendable. Schlamp's scanning device which must be given to each customer is relatively expensive, non-expendable electronic equipment. Therefore the scanning device must be returned to the store by the customer and the customer identified when the scanning device is returned. This is an extremely expensive and labor intensive procedure.

Applicant submits that there is no benefit or advantage in combining Schlamp with Planke since it would be obvious to persons skilled in the art that the system shown by Planke has numerous advantages over the system disclosed by Schlamp. The combination of Schlamp with Planke is also not likely to be pursued by skilled artisans because it would require that Planke use the expensive scanning device of Schlamp instead of the relatively cheap, expendable preprogrammed product identification cards of Planke.

Furthermore even if Schlamp were combined with Planke applicant submits that there is no showing or suggestion of such combination in applicant's claimed invention.

Applicant discloses and claims A System for Sale of Consumer Goods. Applicant's system requires an article selection device with an article display panel that provides representations of articles. The article selection device is actuable by a customer, who activates the selection panel of the device, to receive a token that represents the selected article.

Applicant's system does not require pre-printed cards that form the symbol of an article to be purchased, as in Planke (column 3, lines 26-31).

Applicant's system also does not require that a purchaser scan the bar code of an article to be purchased, as in Schlamp, to identify the article that is desired by the purchaser.

Applicant's system provides an easily accessible article token selection panel device, activated by a customer to obtain a token that corresponds to the selected article. There is no need in applicant's system for customers to obtain a scanning device, as in Schlamp and carry the scanning device up and down aisles of a sample facility to scan the bar codes of desired articles displayed on shelves in the sample facility.

There is also no need in applicant's system for pre-printed merchandise symbols, as in Planke, wherein the symbols must be printed in advance and pre-programmed in sets with each separate set corresponding to each separate article.

In applicant's system there are no pre-printed cards, no sets of cards and no scanning devices. Applicant's article token selection panel device automatically, upon activation by the customer, provides the token that represents the selected article. Thus there is no stockpiling of pre-printed cards, which can become disorganized and useless.

In applicant's invention, as claimed, the token that is provided by the article token selection panel device to the customer is provided on demand to the customer when the customer activates the article token selection panel device.

Applicant submits that the average customer, as well as persons skilled in the art given a choice of applicant's claimed system or the system of Planke and Schlamp, taken individually or in combination with any other prior art of record, would choose applicant's system, because it provides advantages and benefits over Planke and Schlamp.

For example applicant's claim 33 requires,

- “...a non-validated token that corresponds to an article of merchandise selected by the customer, when the article token selection panel device is activated by the customer,...printing the non-validated token with article identifying information...related to a unique token number and the type of article...selected by the customer... the unique token number is selected from the group consisting of,
- (i) a serially generated code,
 - (ii) a randomly generated code,
 - (iii) a predetermined series of codes,
 - (iv) a unique token number generated serially or randomly...”

Applicant submits that there is no showing or suggestion in Planke and Schlamp individually or in combination, of any of the requirements quoted above. Accordingly it submitted that claim 33 is allowable and allowance thereof is respectfully requested. It should also be noted that the amendment to claims 33-36 is intended to cancel redundant language and does not present new issues which require further search.

The claims dependent on claim 33 are likewise submitted as allowable for the reasons supporting allowance of claim 33 as well as the distinctions defined therein.

Claim 34 is of a different scope from claim 33 but also requires,

“...a non-validated token that corresponds to an article of merchandise selected by the customer, when the article selection panel is activated by the customer, the non-validated token having article identifying information for the article of merchandise selected by the customer upon activation of the article token selection panel device...”

Applicant submits that there is no showing or suggestion in Planke and Schlamp individually or in combination of any of the requirements quoted above. Accordingly it submitted that claim 34 is allowable for reasons supporting the allowance of claim 33 and for the distinctions defined in claim 34. Allowance of claim 34 is thus respectfully requested.

Claims dependent on claim 34 are likewise submitted as allowable for reason supporting allowance of claim 34 as well as the distinctions defined therein.

Independent claim 35 is also of a different scope from claim 33 and requires,

“...a non-validated token that corresponds to an article of merchandise selected by the customer, when the article token selection panel device is activated by the customer, the non-validated token having article identifying information...including at least a part of the packaging of the article...said article identifying information including information related to a unique token and or the type of article of merchandise selected by the customer...”

Applicant submits that there is no showing or suggestion in Planke and Schlamp individually or in combination of any of the requirements quoted above. Accordingly it submitted that claim 35 is allowable for the reasons supporting allowance of claim 33 and for the distinctions defined in claim 35. Allowance of claim 35 is respectfully requested.

Claim 31 which depends on claim 35 is likewise submitted as allowable for the reasons supporting allowance of claim 35 as well as the distinctions defined therein.

Claim 36 is also of a different scope from claim 33 and requires,

“...a non-validated token that corresponds to an article of merchandise selected by the customer, when the article token selection panel device is activated by the customer, the non-validated token having article identifying information...including the packaging of the article...or a part of said packaging...article identifying information...related to a unique token number...the unique token number...is selected from the group consisting of,

- a serially generated code,
- a randomly generated code,
- a predetermined series of codes...”

Applicant submits that there is no showing or suggestion in *Planke* and *Schlamp* individually or in combination of any of the requirements quoted above. Accordingly it submitted that claim 36 is allowable for the reasons supporting allowance of claim 33 and for the distinctions defined in claim 36. Allowance of claim 36 is respectfully requested.

Claim 32 which depends on claim 36 is likewise submitted as allowable for the reasons supporting allowance of claim 36.

In view of the foregoing remarks and amendments it is submitted that this application is condition for allowance and allowance thereof is respectfully requested.

Respectfully submitted,

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